IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2091 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NARESH NATVARBHAI PARMAR,

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 19/04/2000

ORAL JUDGEMENT

1. Commissioner of Police, Ahmedabad City, Ahmedabad, passed an order on October 26, 1999, detaining the petitioner-Naresh Natvarbhai Parmar or Kubernagar, Ahmedabad, under the provisions of the Gujarat Prevention Anti-Social Activities Act, 1985 ("PASA Act" for short).

2. The detaining authority took into consideration 11 offences registered against the detenu and statements of two anonymous witnesses in respect of incidents dated October 2 and 3 of 1999. The authority exercised powers under Section 9(2) of the PASA Act, after recording a satisfaction that the incidents narrated by the witnesses and the fear expressed by them are correct and genuine and their identity is required to be given anonymity in public interest. The order came to be passed by the detaining authority under the provisions of the PASA Act on October 26, 1999.

3. Mr. Prajapati, learned advocate appearing for the petitioner, has assailed the order of detention mainly on two grounds. The first is that there is improper exercise of powers under Section 9(2) of the PASA Act in respect of anonymous witnesses. The second fold of argument is that, if the offences registered against the petitioner are considered, they do not indicate any disturbance to public order. At the most, they can be said to have affected the law and order situation. He, therefore, submitted that the subjective satisfaction recorded by the detaining authority that the activities of the detenu are detrimental to public order is without any basis and the order, therefore, may be quashed and set aside.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition.

5. Considering rival side contentions, if the statements of anonymous witnesses are seen, they are recorded on 17th and 18th October, 1999. They are verified by the detaining authority on 26th October, 1999 and the order is passed on that very day. So far as the statements of anonymous witnesses are concerned, it may be noted that the detaining authority has observed that the fear expressed by the witnesses and the statements are correct and genuine. Barring this statement in the grounds of detention, there appears nothing to indicate an exercise having been undertaken by the detaining authority for verifying correctness and genuineness of the statements and the fear expressed by the witnesses. The detaining authority has to take into consideration the background, the antecedents, the character, etc. of the detenu while considering the need for exercise of powers under Section 9(2) of the PASA Act. The authority has to scale the right of the detenu of making an effective representation on the one hand and the public interest on the other and has to strike a balance between

the two. The detaining authority has not filed any affidavit nor is there any contemporaneous material to indicate undertaking of such exercise by the detaining authority and, therefore, the exercise of powers under Section 9(2) of the PASA Act can be taken to have vitiated. No reliance, therefore, can be placed on these statements for sustaining the order of detention. There is improper exercise of powers under Section 9(2), as there is no material to indicate the exercise as stated above (Bai Amina v. State of Gujarat & Ors., 1981 GLR 1186 and Kalidas Chandubhai Kahar v. State of Gujarat & Ors., 1993(2) GLR 1659).

6. A look at the offences registered against the detenu indicates that, ten of them are relating to theft and one relating to attempt to commit theft. By no stretch of imagination can it be said that there was disturbance to public order. It was more or less an individual affair and it can be said to have affected law and order situation and not public order.

8. In view of the above discussion, the reliance placed on by the detaining authority on the statements of anonymous witnesses and the registered offences cannot be upheld. The order of detention as well as the continued detention both are rendered bad in law. The petition, therefore, deserves to be allowed.

7. In the result, the petition is allowed. The impugned order of detention dated October 26, 1999, passed against the detenu is hereby quashed. The detenu-Naresh Natvarbhai Parmar is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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